

THE OFFICIAL GAZETTE 24TH MAY, 2010
LEGAL SUPPLEMENT — A



ACT No. 7 of 2010

THE SEXUAL OFFENCES ACT 2010

I assent,

Rajdeo
Rajdeo Jagdeo,
President.

May 24, 2010

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A.D. 2010]

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AN ACT to reform and consolidate the laws relating to sexual offences and to provide for related matters.

A.D. 2010 Enacted by the Parliament of Guyana:-

PART 1
PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Sexual Offences Act 2010, and shall come into operation on such date as the Minister may, by order, appoint and different dates may be appointed for different provisions.

Interpretation.

2. In this Act -

- (a) "accused" includes a defendant;
- (b) "child" means a person under eighteen years of age;
- (c) "consent" means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or other sexual contact;
- (d) "HIV" means the Human Immuno-deficiency Virus;
- (e) "image" means a moving or still image and includes an image produced by any means and, where the context permits, a three-dimensional image and references to an image of a person include references to an image of an imaginary person and references to observation (however expressed) are to observation whether direct or by looking at an image;
- (f) "learning disability" means a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning; dependence on alcohol or drugs is not considered to be a disorder or disability of the mind;
- (g) "mental disorder" means any disorder or disability of the mind, including learning disability;
- (h) "penetration" means any intrusion, however slight and for however short a time, of any part of a person's body or of any object into the vagina or anus of another person, and any contact, however slight, and for however short a time, between the mouth of one person and the genitals or anus of another, including but not limited to sexual intercourse, cunnilingus, fellatio, anal intercourse and female to female genital contact; and -

- (i) where the penetration is by the penis, the emission of seminal fluid is not necessary to prove the penetration;
 - (ii) penetration is a continuing act from entry to withdrawal;
- (i) "proceedings" includes -
 - (i) any proceeding relating to bail;
 - (ii) a paper committal;
 - (iii) where a person has previously been remanded in custody, any subsequent proceeding with respect to the remand of the person in custody for the same offence;
 - (iv) any interlocutory proceeding held in connection with any criminal proceeding;
 - (v) any civil action or proceeding in the High Court;
 - (vi) a trial or hearing of the charge;
 - (vii) a trial or a hearing of an appeal;
- (j) "sexual" includes penetration, touching or any other activity if a reasonable person would consider that -
 - (i) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual; or
 - (ii) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual;
- (k) "sexual activity" includes touching;
- (l) "touching" includes touching -
 - (i) with any part of the body, which includes a part surgically constructed (in particular, through gender reassignment surgery);
 - (ii) with anything else;
 - (iii) through anything;
- (m) "vagina" includes vulva, meaning the region of the external genital organs of the female and in relation to an animal, references to the vagina or anus include references to any similar part.

PART II
OFFENCES

- Rape.
3. (1) A person ("the accused") commits the offence of rape if -
- (a) the accused -
 - (i) engages in sexual penetration with another person ("the complainant"); or
 - (ii) causes the complainant to engage in sexual penetration with a third person;
 - (b) the complainant does not consent to the penetration; and
 - (c) the accused does not reasonably believe that the complainant consents.
- (2) Sections 7 and 8 (relating to presumptions about consent) apply to an offence under this section.
- (3) A person who commits the offence of rape is liable, on conviction on indictment, to imprisonment for life.
- Sexual assault.
4. (1) A person ("the accused") commits the offence of sexual assault if -
- (a) the accused -
 - (i) touches another person ("the complainant") in a sexual way;
 - (ii) causes the complainant to touch the accused in a sexual way;
 - (iii) causes the complainant to touch a third party in a sexual way; or
 - (iv) otherwise indecently assaults the complainant within the meaning of any other law;
 - (b) the complainant does not consent to the touching or the act which would constitute indecent assault; and
 - (c) the accused does not reasonably believe that the complainant consents.
- (2) Sections 7 and 8 (relating to presumptions as to consent) apply to an offence under this section.
- (3) A person who commits an offence under subsection (1) is liable, on summary conviction, to imprisonment for five years and on conviction on indictment, to imprisonment for ten years.

Consent not
inferred.

5. Consent and belief in consent cannot be inferred by –
- (a) reason of silence or lack of physical resistance on the part of the complainant; or
 - (b) reason of sexual arousal including orgasm and ejaculation.

Belief in
consent.

6. (1) Where a defence of belief in consent is raised to the offence of rape or sexual assault, the belief must be objectively reasonable.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps the accused has taken to ascertain whether the complainant or the third person consents.

(3) It is not a defence to a charge of rape that the accused reasonably believed that the complainant consented to the sexual activity that forms the subject matter of the charge, where-

- (a) the belief of the accused arose from the self-induced intoxication or reckless or wilful blindness of the accused; or
- (b) the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting.

Evidential
presumptions
about consent.

7. (1) If in any proceedings for an offence under section 3 or 4 it is proved that -

- (a) the accused did the sexual activity;
- (b) any of the circumstances specified in subsection (2) existed; and
- (c) the accused knew that those circumstances existed,

the complainant is to be taken not to have consented to the sexual activity unless *prima facie* evidence is adduced to raise an issue as to whether the complainant consented, and the accused is to be taken not to have reasonably believed that the complainant consented unless *prima facie* evidence is adduced to raise an issue as to whether the accused reasonably believed it.

(2) The circumstances referred to in subsection (1) are that-

- (a) any person was, at the time of the sexual activity or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against the complainant;
- (b) any person was, at the time of the sexual activity or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;

- (c) the complainant was, and the accused was not, unlawfully detained at the time of the sexual activity;
- (d) any person had administered to or caused to be taken by the complainant, without the complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the sexual activity;
- (e) the presence of more than one person at the time of the sexual activity was used to intimidate the complainant;
- (f) the complainant was asleep or otherwise unconscious at the time of the sexual activity;
- (g) because of the complainant's physical disability, the complainant would not have been able at the time of the sexual activity to communicate to the accused whether the complainant consented;
- (h)
 - (i) the complainant was, at the time of the sexual activity, unable to refuse because of or for a reason related to a mental disorder, and the accused knew or could reasonably have been expected to know this;
 - (ii) for the purposes of this subsection, the complainant was unable to refuse if the complainant lacks the capacity to choose whether to agree to the sexual activity (whether because the complainant lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason), or the complainant is unable to communicate such a choice to the accused;
- (i) the complainant was otherwise incapable of consenting to the sexual activity at the time of the sexual activity;
- (j) agreement was expressed by the words or conduct of a person other than the complainant;
- (k) abuse of a position of power or authority to the extent that the complainant could not resist at the time of the sexual activity;
- (l) the complainant expressed at the time of the sexual activity a lack of agreement to engage in the sexual activity;
- (m) the complainant, having consented to engage in the sexual activity, expressed, by words or conduct at the time of the sexual activity, a lack of agreement to continue to engage in the sexual activity.

(3) In subsection (2)(a) and (b), the reference to the time immediately before the sexual activity began is, in the case of an act which is one of a continuous series of sexual activities, a reference to the time immediately before the first sexual activity began.

Conclusive
presumptions
about consent.

8. (1) If in any proceedings for an offence under section 3 or 4 it is proved that the accused did the sexual activity and that any of the circumstances specified in subsection (2) existed, it is to be conclusively presumed that -

- (a) the complainant did not consent to the sexual activity; and
- (b) the accused did not believe that the complainant consented to the sexual activity.

(2) The circumstances referred to in subsection (1) are that -

- (a) the accused deceived the complainant as to the nature or purpose of the sexual activity;
- (b) the accused induced the complainant to consent to the sexual activity by impersonating a person known personally to the complainant.

Non-consent offences: children and vulnerable adults

Non-consent
offences.

9. For offences under sections 10 to 26, unless expressly stated in any of the offences, it is not necessary for the prosecution to prove that the complainant did not consent, and belief in consent (whether reasonable or not) is not a defence.

Child sex offences

Rape of a child
under 16 years.

10. (1) A person ("the accused") commits the offence of rape of a child under sixteen years of age ("the complainant") if the accused -

- (a) engages in sexual penetration with the complainant; or
- (b) causes the complainant to engage in sexual penetration with a third party.

(2) It is irrelevant whether at the time of the penetration the accused believed the complainant to be sixteen years of age or over.

(3) A person who commits an offence under subsection (1) is liable on conviction on indictment to imprisonment for life.

Sexual activity
with a child
under 16 years.

11. (1) A person ("the accused") commits the offence of sexual activity with a child under sixteen years of age if the accused -

- (a) engages in a sexual activity (not including sexual penetration) with a child who is under sixteen years of age ("the complainant");
- (b) causes or incites the complainant to engage in a sexual activity with a third party; or
- (c) causes the complainant to perform a sexual act including causing the complainant to masturbate.

(2) It is irrelevant whether at the time of the activity the accused believed the complainant to be sixteen years of age or over.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for five years and on conviction on indictment to imprisonment for ten years.

Causing a child under 16 years to watch a sexual act.

12. (1) A person ("the accused") commits the offence of causing a child to watch a sexual act if the accused causes a person, who is under sixteen years of age ("the complainant"), to watch the accused or a third person engaging in a sexual activity or to look at an image of a person engaging in a sexual activity.

(2) A person who commits an offence under subsection (1) is liable on summary conviction, to a fine of one million dollars and to imprisonment for five years and on conviction on indictment, to imprisonment for ten years.

(3) A person ("the accused") is not guilty of an offence under this section, if the accused acts for the purpose of -

- (a) protecting the complainant from a sexually transmitted infection;
- (b) protecting the physical safety of the complainant;
- (c) preventing the complainant from becoming pregnant; or
- (d) promoting the complainant's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence or the complainant's participation in it.

Meeting a child under 16 years following sexual grooming.

13. (1) A person eighteen years of age or over ("the accused") commits the offence of meeting a child following sexual grooming if -

- (a) having met or communicated with another person ("the complainant") on at least two earlier occasions, the accused -
 - (i) meets the complainant; or
 - (ii) travels with the intention of meeting the complainant in any part of the world;

- (b) at the time, the accused intends to do anything to or in respect of the complainant, during or after the meeting and in any part of the world, which if done will involve the commission by the accused of an offence under this Act; and
- (c) the complainant is under sixteen years of age and the accused does not reasonably believe that the complainant is sixteen years of age or over.

(2) In subsection (1)(a) the reference to the accused having met or communicated with the complainant is a reference to the accused having met the complainant in any part of the world or having communicated with the complainant by any means from, to or in any part of the world.

(3) A person who commits an offence under this section is liable -

- (a) on summary conviction, to a fine of one million dollars and to imprisonment for five years;
- (b) on conviction on indictment, to imprisonment for ten years.

Close in age
defence:
complainant age
12 to 14.

14. Where an accused is charged with an offence under sections 10, 11, 12 or 13 in respect of a complainant who is twelve years of age or over but under fourteen years of age, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if the accused-

- (a) is less than two years older than the complainant; and
- (b) is not in a position of trust or authority towards the complainant within the meaning of section 19, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.

Close in age
defence:
complainant age
14 to 16.

15. Where an accused is charged with an offence under sections 10, 11, 12 or 13 in respect of a complainant who is fourteen years of age or over but under sixteen years of age, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if the accused -

- (a) is less than four years older than the complainant; and
- (b) is not in a position of trust or authority towards the complainant within the meaning of section 19, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.

Sexual activity
with a child
family member.

16. (1) A person ("the accused") commits the offence of sexual activity with a child family member ("the complainant") if -

- (a) the accused -
 - (i) engages in sexual activity with the complainant;
 - (ii) causes the complainant to engage in sexual activity with a third party; or
 - (iii) causes the complainant to perform sexual acts including causing the complainant to masturbate;
- (b) the relation of the accused to the complainant is a family relation within section 17 and the accused knew or could reasonably have been expected to know that the relation of the accused to the complainant was a family relation within that section; and
- (c) the complainant is under eighteen years of age.

(2) Where in proceedings for an offence under this section it is proved that the relation of the accused to the complainant was a family relation within section 17, it is to be taken that the accused knew or could reasonably have been expected to know that the relation of the accused to the complainant was a family relation unless *prima facie* evidence is adduced to raise an issue as to whether the accused knew or could reasonably have been expected to know that it was.

- (3) A person who commits an offence under this section is liable -
- (a) where the sexual activity included sexual penetration, on conviction on indictment to imprisonment for life;
 - (b) in any other case -
 - (i) on summary conviction, to a fine of one million dollars and to imprisonment for five years;
 - (ii) on conviction on indictment, to imprisonment for fourteen years.

(4) A person ("the accused") does not commit an offence under this section if -

- (a) at the time the complainant is eighteen years of age or over and the accused and the complainant are lawfully married; or
- (b) the relationship of the accused to the complainant is not a family relationship within section 17 and immediately before the relationship first became a relationship within section 17, a sexual relationship existed between them.

(5) Subsection (4) (b) does not apply if at the time referred to in that subsection a sexual relationship between the accused and the complainant would have been unlawful.

(6) In proceedings for an offence under this section it is for the accused to prove the matters mentioned in subsection (4)(a) and (b).

Family
relationships.

17. (1) For the purposes of section 16, the relation of one person ("the accused") to another ("the complainant") is a family relation where —

- (a) one of them is the other's parent, grandparent, brother, sister, half-brother, half-sister, aunt or uncle, or the accused is or has been the complainant's foster parent.
 - (b) the accused and the complainant live or have lived in the same household, or the accused is or has been regularly involved in caring for, training, supervising or being in sole charge of the complainant, and -
 - (i) one of them is or has been the other's step-parent (whether through legal marriage or cohabitation);
 - (ii) the accused and the complainant are cousins;
 - (iii) one of them is or has been the other's stepbrother or stepsister, or
 - (iv) the parent or present or former foster parent of one of them is or has been the other's foster parent;
 - (c) the accused and the complainant live in the same household, and the accused is regularly involved in caring for, training, supervising or being in sole charge of the complainant.
- (2) For the purposes of this section -
- (a) "aunt" means the sister or half-sister of a person's parent, and "uncle" has a corresponding meaning;
 - (b) "cousin" means the child of an aunt or uncle;
 - (c) a person is a child's foster parent if so deemed under any law, deed, agreement, arrangement or court order;
 - (d) "stepbrother" and "stepsister" include the child of any step-parent.

Abuse of position of trust: sexual activity with a child

Sexual activity
with a child by
abusing a
position of
trust.

18. (1) A person ("the accused") commits the offence of sexual activity with a child under eighteen years of age by abusing a position of trust in relation to that child ("the complainant") if -

- (a) the accused -

- (i) engages in sexual activity with the complainant;
 - (ii) causes the complainant to engage in sexual activity with a third party; or
 - (iii) causes the complainant to perform sexual acts including causing the complainant to masturbate;
- (b) the accused is in a position of trust in relation to the complainant by virtue of circumstances within section 19 (1) (a), (b) or (c), and is not in a position of trust by virtue of other circumstances; and
- (c) the accused knows or could reasonably be expected to know of the circumstances by virtue of which the accused is in a position of trust in relation to the complainant.

(2) Where in proceedings for an offence under this section it is proved that the accused was in a position of trust in relation to the complainant by virtue of circumstances within section 19 (1) (a), (b) or (c), and it is not proved that the accused was in a position of trust by virtue of other circumstances, it is to be taken that the accused knew or could reasonably have been expected to know of the circumstances by virtue of which the accused was in such a position of trust unless *prima facie* evidence is adduced to raise an issue as to whether the accused knew or could reasonably have been expected to know of those circumstances.

(3) A person who commits an offence under this section is liable -

- (a) where the sexual activity included sexual penetration, on conviction on indictment to imprisonment for life;
- (b) in any other case -
 - (i) on summary conviction, to a fine of one million dollars and to imprisonment for five years;
 - (ii) on conviction on indictment, to imprisonment for ten years.

(4) A person ("the accused") does not commit an offence under this section if -

- (a) at the time the complainant is sixteen years of age or over and the accused and the complainant are lawfully married; or
- (b) immediately before the accused entered into a position of trust with the complainant, a sexual relationship existed between them.

(5) Subsection (4) (b) does not apply if at the time referred to in that subsection sexual intercourse between the accused and the complainant would have been unlawful.

(6) In proceedings for an offence under this section it is for the accused to prove the matters mentioned in subsections (4) (a) and (b).

Position of
trust.

19. (1) For the purposes of sections 14, 15 and 18, the positions of trust in relation to the accused and the complainant include, where -

- (a) the accused looks after persons, including the complainant, detained in an institution by virtue of a Court order or under any law;
- (b) the accused looks after persons, including the complainant, who are accommodated and cared for in one of the following institutions -
 - (i) a hospital;
 - (ii) an independent clinic;
 - (iii) a care home, residential care home or private hospital; or
 - (iv) a community home, voluntary home, children's home or orphanage;
- (c) the accused looks after persons who are receiving education at an educational institution (whether in the role of teacher or in another role) and the complainant is receiving, and the accused is not receiving, education at that institution;
- (d) the accused is the guardian of the complainant;
- (e) the accused is not appointed to be guardian of the complainant but is the legal or reputed husband or wife of one of the complainant's parents or guardians;
- (f) the complainant is in vocational training and the accused looks after the complainant on an individual basis; or
- (g) the accused is a social worker, probation officer, coach, instructor, minister of religion, babysitter, child-minder or has a welfare position in relation to the complainant, and has regular unsupervised contact with the complainant.

(2) For the purposes of subsection (1) -

- (a) the accused looks after persons under eighteen years of age if the accused is regularly involved in caring for, training, supervising or being in sole charge of such persons;
- (b) the accused looks after the complainant on an individual basis if -
 - (i) the accused is regularly involved in caring for, training or supervising the complainant; and
 - (ii) in the course of the involvement, the accused regularly has unsupervised contact with the complainant (whether face to face or by any other means).

Obstructing
prosecution.

20. (1) In proceedings relating to an offence under this Act, a person commits the offence of obstructing the prosecution if that person prevents a child from -

- (a) giving a statement to the police;
- (b) giving evidence in any other way which would be admissible for the paper committal; or
- (c) testifying.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of one million dollars and to imprisonment for five years.

Arranging or
facilitating
commission of
child sex
offence.

21. (1) A person ("the accused") commits the offence of arranging or facilitating the commission of a child sex offence if the accused intentionally arranges or facilitates something that the accused intends to do, intends another person to do, or believes that another person will do, in any part of the world, and doing it will involve the commission of an offence under section 10, 11, 12, 13, 16 or 18.

(2) A person ("the accused") does not commit an offence under this section if -

- (a) the accused arranges or facilitates something that the accused believes another person will do, but that the accused does not intend to do or intend another person to do; and
- (b) any offence within subsection (1) would be an offence against a child for whose protection the accused acts.

(3) For the purposes of subsection (2), a person acts for the protection of a child if the person acts for the purpose of -

- (a) protecting the child from sexually transmitted infection;
- (b) protecting the physical safety of the child;
- (c) preventing the child from becoming pregnant; or
- (d) promoting the child's emotional well-being by the giving of advice, or any educational activity,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence within subsection (1) or the child's participation in it.

(4) A person who commits an offence under this section is liable -

- (a) on summary conviction, to a fine of one million dollars and to imprisonment for five years;
- (b) on conviction on indictment to imprisonment for ten years.

Vulnerable adults
Sex with adult family member

Sex with adult family member.

22. (1) A person ("the accused") sixteen years of age or over commits the offence of sex with an adult family member if the accused -

- (a) engages in sexual penetration with another person ("the complainant") who is eighteen years of age or over;
- (b) is related to the complainant as parent, grandparent, child, grandchild, brother, sister, half brother, half sister, uncle, aunt, nephew or niece; and
- (c) knew or could reasonably be expected to have known that the accused was related to the complainant in a manner specified in paragraph (b).

(2) Where in proceedings for an offence under this section it is proved that the accused was related to the complainant in any manner specified in subsection (1) (b), it is to be taken that the accused knew or could reasonably have been expected to know of the relationship between them unless *prima facie* evidence is adduced to raise an issue as to whether the accused knew or could reasonably have been expected to know of the relationship.

(3) A person who commits an offence under this section is liable -

- (a) on summary conviction, to a fine of five hundred thousand dollars and to imprisonment for two years;
- (b) on conviction on indictment, to imprisonment for five years.

Obtaining sexual activity by inducement, threat, deception

Obtaining sexual activity with a person with a mental disorder by inducement, threat or deception.

23. (1) A person ("the accused") commits the offence of obtaining sexual activity with a person with a mental disorder by inducement, threat or deception if -

- (a) with the agreement of another person ("the complainant"), the accused -
 - (i) engages in sexual activity with the complainant;
 - (ii) causes or incites the complainant to engage in sexual activity with a third party; or
 - (iii) causes the complainant to perform sexual acts including but not limited to causing the complainant to masturbate;
- (b) the accused obtains the complainant's agreement by means of an inducement offered or given, a threat made or a deception practised by the accused for that purpose; and
- (c) the complainant has a mental disorder and the accused knows or could reasonably be expected to know that the complainant has a mental disorder.

(2) A person who commits an offence under this section, if sexual activity involved sexual penetration is liable, on conviction on indictment, to imprisonment for life.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable on summary conviction to a fine of one million dollars and to imprisonment for five years, and on conviction on indictment to imprisonment for fourteen years.

Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception.

24. (1) A person ("the accused") commits the offence of causing a person with a mental disorder to watch a sexual act or to look at an image of a person engaging in a sexual activity if -

- (a) with the agreement of another person ("the complainant"), the accused causes the complainant to watch a third person engage in a sexual activity, or to look at an image of any person engaging in a sexual activity;
- (b) the complainant agrees to watch or look because of an inducement offered or given, a threat made or a deception practised by the accused for the purpose of obtaining that agreement; and
- (c) the complainant has a mental disorder and the accused knows or could reasonably be expected to know that the complainant has a mental disorder.

(2) A person who commits an offence under this section is liable on summary conviction to a fine of one million dollars and to imprisonment for five years and on conviction on indictment to imprisonment for ten years.

(3) A person ("the accused") is not guilty of an offence under this section, if the accused acts for the purpose of -

- (a) protecting the complainant from a sexually transmitted infection;
- (b) protecting the physical safety of the complainant;
- (c) preventing the complainant from becoming pregnant; or
- (d) promoting the complainant's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence or the complainant's participation in it.

Care workers for persons with a mental disorder

Care worker engaging in, causing or inciting sexual activity with a person with a mental disorder.

25. (1) A person ("the accused") who is a care worker, commits the offence of a care worker engaging in, causing or inciting sexual activity with a person ("the complainant") if -

- (a) the accused -
 - (i) engages in sexual activity with the complainant;
 - (ii) causes or incites the complainant to engage in sexual activity with a third party; or
 - (iii) causes or incites the complainant to perform sexual acts including but not limited to causing the complainant to masturbate;
- (b) the complainant has a mental disorder and the accused knows or could reasonably be expected to know that the complainant has a mental disorder; and
- (c) the accused is involved in the complainant's care in a way that falls within section 27.

(2) Where in proceedings for an offence under this section it is proved that the complainant had a mental disorder, it is to be taken that the accused knew or could reasonably have been expected to know that the complainant had a mental disorder unless *prima facie* evidence is adduced to raise an issue as to whether the accused knew or could reasonably have been expected to know it.

(3) A person who commits an offence under this section, if the sexual activity involved sexual penetration, is liable, on conviction on indictment, to imprisonment for life.

(4) Unless subsection (3) applies, a person guilty of an offence under this section is liable -

- (a) on summary conviction, to a fine of one million dollars and to imprisonment for five years;
- (b) on conviction on indictment, to imprisonment for ten years.

(5) A person ("the accused") does not commit an offence under this section if -

- (a) at the time the complainant is eighteen years of age or over, and the accused and the complainant are lawfully married; or
- (b) immediately before the accused became involved in the complainant's care in a way that falls within section 27, a sexual relationship existed between the accused and the complainant.

(6) Subsection (5) (b) does not apply if at that time sexual intercourse between the accused and the complainant would have been unlawful.

(7) In proceedings for an offence under this section it is for the accused to prove the matters mentioned in subsection (5) (a) and (b).

Care worker causing a person with a mental disorder to watch a sexual act.

26. (1) A person ("the accused") commits the offence of a care worker causing a person with a mental disorder to watch a sexual act or to look at an image of any person engaging in a sexual activity if -

- (a) for the purpose of obtaining sexual gratification, the accused causes another person ("the complainant"), to watch a third person engaging in a sexual activity or to look at an image of any person engaging in a sexual activity;
- (b) the complainant has a mental disorder and the accused knows or could reasonably be expected to know that the complainant has a mental disorder; and
- (c) the accused is involved in the complainant's care in a way that falls within section 27.

(2) Where in proceedings for an offence under this section it is proved that the complainant had a mental disorder, it is to be taken that the accused knew or could reasonably have been expected to know that the complainant had a mental disorder unless *prima facie* evidence is adduced to raise an issue as to whether the accused knew or could reasonably have been expected to know it.

(3) A person who commits an offence under this section is liable -

- (a) on summary conviction, to a fine of one million dollars and to imprisonment for five years;
- (b) on conviction on indictment, to imprisonment for ten years.

(4) A person ("the accused") does not commit an offence under this section if -

- (a) at the time the complainant is eighteen years of age or over, and the accused and the complainant are lawfully married;
- (b) immediately before the accused became involved in the complainant's care in a way that falls within section 27, a sexual relationship existed between the accused and the complainant; or
- (c) the accused acts for the purpose of -
 - (i) protecting the complainant from a sexually transmitted infection;

(ii) protecting the physical safety of the complainant;
 (iii) preventing the complainant from becoming pregnant; or
 (iv) promoting the complainant's emotional wellbeing by the giving of advice,
 and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence or the complainant's participation in it.

(5) Subsection (4)(b) does not apply if at that time sexual intercourse between the accused and the complainant would have been unlawful.

(6) In proceedings for an offence under this section it is for the accused to prove the matters mentioned in subsection (4) (a) and (b).

Interpretation of
care worker.

27. For the purposes of sections 25 and 26, a person ("the accused") is involved in the care of another person ("the complainant") in a way that falls within this section if any of the following paragraphs apply -

- (a) (i) the complainant is accommodated and cared for in a care home, community home, voluntary home or children's home; and
 (ii) the accused has functions to perform in the home in the course of employment which have brought the accused or are likely to bring the accused into regular face to face contact with the complainant.
- (b) if the complainant is a patient for whom services are provided -
 (i) by a public health body or an independent medical agency; or
 (ii) in an independent clinic or an independent hospital,
 and the accused has functions to perform for the body or agency or in the clinic or hospital in the course of employment which have brought the accused or are likely to bring the accused into regular face to face contact with the complainant;
- (c) if the accused is, whether or not in the course of employment, a provider of care, assistance or services to the complainant in connection with the complainant's mental disorder, and as such, has had or is likely to have regular face to face contact with the complainant.

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Other offences

- Exposure of the
genitals.
28. (1) A person ("the accused") commits the offence of exposure of the
genitals if the accused -
- (a) intentionally exposes the genitals of the accused; and
 - (b) intends that someone will see the genitals of the accused and be
caused alarm or distress.
- (2) A person who commits an offence under this section is liable -
- (a) on summary conviction, to a fine of five hundred thousand dollars
and to imprisonment for two years;
 - (b) on conviction on indictment, to imprisonment for five years.
- Voyeurism.
29. (1) A person ("the accused") commits the offence of voyeurism if -
- (a) for the purpose of obtaining sexual gratification, the accused
observes another person ("the complainant") doing a private act
without the express consent of the complainant to being observed
for sexual gratification;
 - (b) the accused installs equipment, or constructs or adapts a structure
or part of a structure, with the intention of enabling himself or
another person to commit an offence under paragraph (a);
 - (c) the accused operates equipment with the intention of enabling
another person to observe, for the purpose of obtaining sexual
gratification, a third person ("the complainant") doing a private
act without the express consent of the complainant to operating
equipment with that intention; or
 - (d) the accused records another person ("the complainant") doing a
private act with the intention that the accused or a third person
will, for the purpose of obtaining sexual gratification, look at an
image of the complainant doing the act without the express
consent of the complainant to record the act with that intention.
- (2) A person who commits an offence under this section is liable -
- (a) on summary conviction, to a fine of five hundred thousand dollars
and to imprisonment for two years;
 - (b) on conviction on indictment, to imprisonment for five years.
- Interpretation of
voyeurism.
30. (1) For the purposes of section 29, a person is doing a private act if the
person is in a place which, in the circumstances, would reasonably be expected to
provide privacy, and -
- (a) the person's genitals, buttocks or breasts are exposed or covered
only with underwear;

- (b) the person is using a lavatory; or
- (c) the person is doing a sexual act that is not of a kind ordinarily done in public.

(2) In section 29, "structure" includes a tent, vehicle or vessel or other temporary or movable structure.

Intercourse with an animal.

31. (1) A person commits the offence of intercourse with an animal if he, with his penis penetrates the vagina or anus of a living animal, and he knows that, or is reckless as to whether, it is the vagina or anus of a living animal that is penetrated.

(2) A person commits an offence of intercourse with an animal if she causes, or allows, her vagina or anus to be penetrated by the penis of a living animal, and she knows that, or is reckless as to whether, it is the penis of an animal she is being penetrated by.

- (3) A person who commits an offence under this section is liable -
 - (a) on summary conviction, to a fine of one million dollars and to imprisonment for two years;
 - (b) on conviction on indictment, to imprisonment for five years.

Preparatory offences

Administering a substance with intent.

32. (1) A person ("the accused") commits the offence of administering a substance with intent if the accused administers a substance to, or causes a substance to be taken by, another person ("the complainant") -

- (a) knowing that the complainant does not consent; and
- (b) with the intention of stupefying or overpowering the complainant, so as to enable any person to engage in a sexual activity that involves the complainant.

- (2) A person who commits an offence under this section is liable -
 - (a) on summary conviction, to a fine of one million dollars and to imprisonment for five years;
 - (b) on conviction on indictment, to imprisonment for ten years.

Committing an offence with intent to commit a sexual offence.

33. (1) A person commits the offence of committing an offence with intent to commit a sexual offence if the person commits any offence with the intention of committing a sexual offence under this Act.

(2) A person who commits an offence under this section is liable on conviction on indictment, where the offence is committed by kidnapping or false imprisonment, to imprisonment for life.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable -

- (a) on summary conviction, to a fine of one million dollars and to imprisonment for five years;
- (b) on conviction on indictment, to imprisonment for ten years.

Trespass with
intent to
commit a sexual
offence.

34. (1) A person commits an offence of trespass with intent to commit a sexual offence if the person -

- (a) is a trespasser on any premises;
- (b) intends to commit a sexual offence under this Act on the premises; and
- (c) knows that, or is reckless as to whether, the person is a trespasser.

(2) In this section -

- (a) "premises" includes a structure or part of a structure;
- (b) "structure" includes a tent, vehicle or vessel or other temporary or movable structure.

(3) A person who commits an offence under this section is liable -

- (a) on summary conviction, to a fine of one million dollars and to imprisonment for five years;
- (b) on conviction on indictment, to imprisonment for ten years.

Offences
outside Guyana.

35. (1) Any conduct or act done by a resident or citizen of Guyana in a country or territory outside Guyana shall be deemed to be a sexual offence under the law of Guyana if the conduct or act -

- (a) constituted an offence under the law in force in that country or territory; and
- (b) would constitute a sexual offence under this Act had it been committed in Guyana.

(2) For the purposes of this section, conduct or an act punishable under the law in force in any country or territory outside Guyana constitutes an offence under that law, however it is described in that law.

(3) The conduct or act referred to in subsection (1) shall be deemed to be an offence under this Act unless the person charged serves on the prosecution a notice, no later than rules of Court shall provide, that the conduct or act alleged does not constitute an offence and his reasons for so stating.

(4) The Court if it thinks fit, may require the prosecution to prove that the conduct or act constitutes an offence under this Act, whether or not the person charged serves such a notice.

(5) In the Court the question whether the conduct or act constitutes an offence under this Act shall be decided by the judge alone.

Conspiracy, attempt, incitement, aiding, etc.

Punishment of attempt to commit, etc. offence against this Act.

36. Notwithstanding anything contained in any other written law, every person who -

- (a) attempts to commit;
- (b) conspires with any other person to commit;
- (c) solicits, incites, aids, abets or counsels or attempts to solicit, incite, aid, abet or counsel any other person to commit; or
- (d) causes or procures, or attempts to cause or procure the commission of,

any offence, whether summary or indictable, against this Act may be charged with, tried, convicted and punished in all respects as if that person were a principal offender.

Supplementary and general

Marital and other relationships.

37. (1) Unless where specifically stated in this Act, a marital or other relationship, previous or existing, is not a defence to a charge of any offence under this Act.

(2) A proposal of marriage, made by the accused or any other party, to the complainant is not a defence to, nor does it have any bearing on, a charge of any offence under this Act.

Abolition of presumption that male under 14 years incapable of sexual intercourse.

38. The presumption of criminal law that a male under fourteen years of age is incapable of sexual intercourse is abolished.

Charge laid under law in force when offence committed.

39. A person who committed an offence before the commencement of this Act and which is an offence under this Act shall be charged, tried and punished under the law in force immediately before the coming into operation of this Act.

Divestment of authority over child.

40. Where at the trial of any offence under this Act, it is proved to the satisfaction of the Court that an offence under this Act committed against a child has been caused, encouraged or favoured by the child's father, mother, guardian or

person of all authority over the child and appoint any other suitable person willing to take charge of the child to be the guardian until the child becomes an adult, and the Court shall have power to vary from time to time or rescind or discharge such order.

PART III INVESTIGATION

Mandatory
record and
investigation.

41. (1) Where an offence under this Act is reported to the police, the police shall, in every case record the report and conduct an investigation.

(2) Within three months of a complaint being made under subsection (1) -

- (a) a charge shall be laid in respect of the report; or
- (b) the file relating to the report and investigation shall be sent to the Director of Public Prosecutions for advice.

(3) Failure to comply with subsection (2) constitutes neglect of duty by the Investigating Rank and the Investigating Rank shall be liable to answer disciplinary charges in accordance with the Police (Discipline) Act.

Cap. 17:01

(4) A person who makes a false complaint to the police may, on the advice of the Director of Public Prosecutions, be charged for the offence of making a false complaint and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for three years.

Confrontation.

42. (1) Where a report is made of an offence under this Act, at no point during the investigation shall the complainant be required to recount the complaint or any part of it, in the presence of the accused unless the complainant wants to do so.

(2) The complainant shall not be required to view or be in the presence of any person referred to in the complaint as having perpetrated any offence under this Act save for the purposes of an identification parade and then only -

- (a) by way of audio visual link;
- (b) by way of a two way mirror; or
- (c) in any other manner sensitive to the complainant's well-being.

PART IV
PROCEDURE AT COURT
Procedure in Paper Committals

Paper
committals.
First
Schedule

43. Where a person is charged with an offence under this Act, there shall be no oral preliminary inquiry and instead a paper committal shall be held in accordance with the procedure set out in the First Schedule.

Sex offences
court.

44. The National Task Force for Prevention of Sexual Violence, established under section 87, shall report to the Minister within one year of the date of commencement of this Act on proposals for a special court environment to try cases in relation to offences under this Act.

Exclusion of public from hearing

Exclusion of
public in certain
cases.

45. In proceedings where the accused is charged with an offence under this Act, the presiding judge or magistrate shall order the exclusion of members of the public (including the media) from the Court room for the duration of the proceedings, unless the judge or magistrate is of the opinion that such an order is not necessary in the interests of the proper administration of justice to -

- (a) ensure all relevant evidence is heard;
- (b) ensure that the interests of witnesses under eighteen years of age are safeguarded in all proceedings; or
- (c) ensure the justice system participants who are involved in the proceedings are protected.

Factors to be
taken into
account.

46. In making a determination under section 45, the Court shall take into account -

- (a) the nature of sexual offences and the consequences of public disclosure of the details of such offences on the life of the complainant in the particular case and on society's interest in encouraging the reporting of sexual offences in general;
- (b) the balance between the interests of justice in generally holding criminal proceedings in public, and the potential prejudice to the complainant's personal dignity and right of privacy of doing so in cases of sexual violence;
- (c) the right of the complainant and of every individual to personal security and to the full protection and benefit of the law; and
- (d) any other factor that the judge or magistrate considers relevant.

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Persons not excluded.

47. The accused, complainant, any support person and attorneys-at-law representing either party and any necessary interpreter shall not be excluded under section 45.

Reasons to be stated.

48. If an accused is charged with an offence under this Act and the Court orders that the public shall not be excluded from the proceedings, the Court shall state, by reference to the circumstances of the case, the reason for making such an order.

Representations before determination.

49. The Court shall, at the first Court appearance, and may at any other stage, bring section 45 to the attention of the prosecution and ask the complainant directly if the complainant wishes to give oral or written evidence on the question of whether the public should be excluded from the hearing before the judge or magistrate makes a determination.

Public and jury excluded.

50. The Court shall consider any representations on whether to make a determination under section 45 with the public and jury excluded.

Passing of sentence in public.

51. Where an order has been made under section 45 to exclude the public from the hearing the passing of sentence shall take place in public.

Behaviour and reaction of complainant

Behaviour and reaction of complainant.

52. Where on the trial of an accused person for an offence under this Act evidence is given or a question is asked of a witness about the behaviour or reaction of the complainant during or after the alleged offence the judge shall inform the jury that complainants of sexual offences display a wide range of responses, and that the absence of behaviour that they might expect a complainant of a sexual offence to display should not be taken as evidence that the offence charged did not take place.

Special Measures

Special measures directions.

53. (1) At any proceedings in relation to an offence under this Act, unless the complainant requests that no such protection be put in place, the Court shall direct that the complainant be protected when giving evidence by one or more of the special measures set out in sections 55 to 59.

(2) A special measures direction shall specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness's evidence.

(3) In this Part "special measures direction" means a direction under this section.

(4) Nothing in this Part is to be regarded as affecting any power of a Court to make an order or give leave of any description (in the exercise of its inherent jurisdiction or otherwise) in relation to witnesses in proceedings for an offence under this Act.

Further provisions about directions.

54. (1) Subject to subsection (2) a special measures direction has binding effect from the time it is made until the proceedings for the purposes of which it is made are either -

- (a) determined (by acquittal, conviction or otherwise); or
- (b) withdrawn or not proceeded with,

in relation to the accused or (if there is more than one) in relation to each of the accused.

(2) The Court may discharge or vary (or further vary) a special measures direction if it appears to the Court to be in the interests of justice to do so, and may do so either -

- (a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or
- (b) of its own motion.

(3) In subsection (2) "the relevant time" means -

- (a) the time when the direction was given; or
- (b) if a previous application has been made under that subsection, the time when the application (or last application) was made.

(4) The Court shall state in open Court its reasons for -

- (a) giving or varying;
- (b) refusing an application for, or for the variation or discharge of; or
- (c) discharging,

a special measures direction and, if it is a magistrates' court, shall cause them to be entered in the record.

(5) Rules of Court may make provision -

- (a) for uncontested applications to be determined by the Court without a hearing;
- (b) for preventing the renewal of an unsuccessful application for a special measures direction except where there has been a material change of circumstances;

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- (c) for expert evidence to be given in connection with an application for, or for the variation or discharge of such a direction;
- (d) for the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

Screening
witness from
accused.

55. (1) A special measures direction may provide for the witness, while giving testimony or being sworn in Court, to be prevented by means of a screen or other arrangement from seeing the accused.

(2) The screen or other arrangement referred to in subsection (1) shall not prevent the witness from being able to see, and to be seen by -

- (a) the judge and jury or magistrate;
- (b) attorneys-at-law acting in the proceedings; and
- (c) any interpreter or other person appointed (in pursuance of the direction or otherwise) to assist the witness.

(3) Where two or more attorneys-at-law are acting for a party to the proceedings, subsection (2) (b) is to be regarded as satisfied in relation to those representatives if the witness is able at all material times to see and be seen by at least one of them.

Evidence by
audio visual
link.

56. (1) A special measures direction may provide for the witness to give evidence by means of audio visual link facilities.

Cap. 5:03

(2) Where a special measures direction is given under subsection (1), sections 73A and 73B of the Evidence Act shall apply, except that -

- (a) section 73A (3) (b) shall not apply; and
- (b) section 73A (5) (a) and (b) shall not apply, and shall be substituted for the purposes of application to proceedings for an offence under this Act, by the following -

"the person giving evidence to see and hear, and to be seen and heard by, the magistrate or judge, at least one attorney-at-law representing the prosecution and one the defence, and where the jury is present, the jury."

Removal of
gowns.

57. A special measures direction may provide for the wearing of gowns to be dispensed with during the giving of the witness's evidence.

Examination of
witness through
intermediary.

58. (1) A special measures direction may provide for any examination of a child witness (however and wherever conducted) to be conducted through an interpreter or other person approved by the Court for the purposes of this section ("an intermediary").

(2) The function of an intermediary is to communicate -

- (a) to the witness, questions put to the witness; and
- (b) to any person asking such questions, the answers given by the witness in reply to them,

and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question.

(3) Any examination of the witness in pursuance of subsection (1) shall take place in the presence of such persons as Rules of Court or the direction may provide, but in circumstances in which -

- (a) the judge or magistrate and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the intermediary; and
- (b) the jury are able to see and hear the examination of the witness.

(4) Where two or more legal representatives are acting for a party to the proceedings, subsection (3) (a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(5) A person may not act as an intermediary in a particular case except after being sworn or affirmed that the person will faithfully perform the function as intermediary.

Cap. 8:01

(6) Sections 324 to 331 of the Criminal Law (Offences) Act shall apply to intermediaries under this section.

Use of
anatomically
correct dolls.

59. A special measures direction may provide for the use of anatomically correct dolls in the taking of evidence from a child witness.

Status of
evidence given
under special
measures
direction.

60. Where a statement is made by a witness in criminal proceedings in accordance with a special measures direction, and is not made by the witness in direct oral testimony in Court but forms part of the witness's evidence in those proceedings, the statement shall be treated as if made by the witness in direct oral testimony in Court.

Presentation of complainant's views and concerns

Opportunity for presentation of complainant's views and concerns.

61. (1) The Court shall provide an opportunity to a complainant of an offence under this Act, if the complainant desires it, to present the complainant's views and concerns at appropriate stages of criminal proceedings against the accused, in a manner not prejudicial to the rights of the accused.

(2) For the purposes of subsection (1), appropriate stages of criminal proceedings include the bail hearing and before passing of sentence.

Anonymity for the complainant

Anonymity for complainant in press reporting.

62. (1) The publication in any document, or the broadcasting, or transmission in any way, of any information that could identify the complainant or witness to an offence under this Act is prohibited.

- (2) This section does not apply in respect of the disclosure of information -
- (a) in the course of the administration of justice; or
 - (b) in the provision of medical services or psychological treatment to the complainant, when it is not the purpose of the disclosure to make the information known in the community.

(3) Every person who publishes in any document, or broadcasts, or transmits in any way, any information that could identify the complainant or a witness contrary to subsection (1) commits an offence and is liable on summary conviction to a fine of two million dollars.

(4) Where a person is charged with an offence under subsection (3) in respect of the publication in any document, or the broadcasting, or transmission in any way, of any information that could identify the complainant or a witness, it shall be a defence, subject to subsection (5), to prove that the publication, broadcast, or transmission in which the matter appeared was one in respect of which the complainant had given written consent.

(5) Written consent is not a defence if it is proved that any person interfered unreasonably with the complainant's peace or comfort with intent to obtain the consent.

Anonymity for
the complainant
in Court.

63. When called to give evidence in Court the complainant's name and address shall not be stated, and the Court shall advise the complainant before the complainant gives evidence that the complainant may not do so.

PART V EVIDENCE

Competence of witness and capacity to be sworn

Competence of
witness to give
evidence.

64. (1) Subject to subsections (2) and (3), at every stage in criminal proceedings under this Act all persons are competent to give evidence.

(2) A person is not competent to give evidence in criminal proceedings under this Act if it appears to the Court that the person is not a person who is able to —

- (a) understand questions put to the person as a witness; and
- (b) give answers to them which can be understood.

(3) A person charged with an offence under this Act is not competent to give evidence for the prosecution in the proceedings for the offence (whether the person is the only person, or is one of two or more persons, charged with the offence).

(4) In subsection (3) the reference to a person charged with an offence under this Act does not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings (whether as a result of pleading guilty or for any other reason).

Determining
competence of
witness.

65. (1) Any question whether a witness in criminal proceedings under this Act is competent to give evidence in the proceedings shall be determined by the Court in accordance with this section, whether raised —

- (a) by a party to the proceedings; or
- (b) by the Court of its own motion.

(2) It is for the party calling the witness to satisfy the Court that, on a balance of probabilities, the witness is competent to give evidence in the proceedings.

(3) In determining the question mentioned in subsection (1) the Court shall treat the witness as having the benefit of any directions under section 53 which the Court has given, or proposes to give, in relation to the witness.

(4) Any proceedings held for the determination of the question shall take place in the absence of the jury.

(5) Where the Court is in doubt as to whether the witness is competent, the Court may receive evidence from anyone it deems fit, including a social worker or duly qualified medical practitioner.

(6) Any questioning of the witness (where the Court considers that necessary) shall -

- (a) be conducted by the Court in the presence of the parties and any social worker or support person accompanying the witness; and
- (b) be conducted with the benefit of any special measures the Court deems necessary under sections 53 and 54.

Determining
whether witness
to be sworn.

66. (1) Any question whether a witness in criminal proceedings under this Act may be sworn for the purpose of giving evidence on oath, shall be determined by the Court in accordance with this section, whether raised -

- (a) by a party to the proceeding; or
- (b) by the Court of its own motion.

(2) The witness may not be sworn for that purpose unless the witness has a sufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.

(3) The witness shall, if the witness is able to give intelligible testimony, be presumed to have a sufficient appreciation of those matters if no evidence tending to show the contrary is adduced.

(4) If any such evidence is adduced, it is for the party seeking to have the witness sworn to satisfy the Court that on a balance of probabilities, the witness has a sufficient appreciation of the matters mentioned in subsection (2).

(5) Any proceedings held for the determination of the question mentioned in subsection (1) shall take place in the absence of the jury.

(6) Where the Court is in doubt as to whether the witness can be sworn, the Court may receive evidence from anyone it deems fit, including a social worker or duly qualified medical practitioner.

(7) Any questioning of the witness (where the Court considers that necessary) shall –

- (a) be conducted by the Court in the presence of the parties and any social worker or support person accompanying the witness; and
- (b) be conducted with the benefit of any special measures the Court deems necessary under section 53.

(8) For the purposes of this section a person is able to give intelligible testimony if the person is able to –

- (a) understand questions put to the person as a witness; and
- (b) give answers to them which can be understood.

Reception of
unsworn
evidence.

67. (1) Subsections (2) and (3) apply to a person who is competent to give evidence in criminal proceedings under this Act, but (by virtue of section 66) is not permitted to be sworn for the purpose of giving evidence on oath in such proceedings.

(2) The evidence in criminal proceedings under this Act of a person to whom this subsection applies shall be given unsworn.

(3) A deposition of unsworn evidence given by a person to whom this subsection applies may be taken for the purposes of criminal proceedings under this Act as if that evidence had been given on oath.

(4) A Court in criminal proceedings under this Act shall accordingly receive in evidence any evidence given unsworn in pursuance of subsection (2) or (3).

(5) Where a person (“the witness”) who is competent to give evidence in criminal proceedings under this Act gives evidence in such proceedings unsworn, no conviction, verdict or finding in those proceedings shall be taken to be unsafe for the purposes of any statute or other law by reason only that it appears to the Court of Appeal or any other Court that the witness was a person falling within section 66 (and should accordingly have given evidence on oath).

Penalty for
giving false
unsworn
evidence.

68. (1) This section applies where a person gives unsworn evidence in criminal proceedings under section 67.

(2) If a person, as referred to in subsection (1), wilfully gives false evidence in circumstances that, had the evidence been given on oath, the person would have committed perjury, the person commits an offence and is liable –

- (a) where the criminal proceedings related to an indictable offence punishable with imprisonment for life, on indictment to seven years imprisonment;
- (b) where the criminal proceedings related to any case not mentioned in the preceding subsection, on indictment to five years imprisonment.

Corroboration.

69. (1) No corroboration of the evidence of the complainant or the sworn or unsworn evidence of a child shall be required for a conviction of an offence under this Act, and the judge shall not direct the jury that it is unsafe to find the accused guilty in the absence of corroboration.

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(2) Sections 61 (3) and 71 (3) of the Evidence Act shall not apply to this Act.

Compellability.

70. The spouse of a person charged with an offence under this Act may be called as a witness for either the prosecution or defence and without the consent of the person charged, and if so called, notwithstanding any other law, is a compellable witness.

Previous consistent statements

Warning to jury.

71. Where on the trial of an accused person for an offence under this Act evidence is given or a question is asked of a witness which tends to suggest an absence of complaint in respect of the commission of the alleged offence by the person upon whom the offence is alleged to have been committed or to suggest delay by that person in making any such complaint, the judge shall -

- (a) give a warning to the jury to the effect that an absence of complaint or a delay in complaining does not necessarily indicate that the allegation that the offence was committed is false; and
- (b) inform the jury that there may be good reasons why a victim of a sexual offence may hesitate in making or may refrain from making a complaint about the assault.

Recent complaint.

72. (1) In considering whether a recent complaint was made as soon as could reasonably be expected, the Court shall consider the following factors -

- (a) the nature of sexual abuse and the stigma or humiliation often thought to go with them, and that they are commonly found difficult to report (particularly child sexual abuse);
- (b) the relationship of the victim and accused;
- (c) the particular characteristics of the person in relation to whom the abuse is alleged to have been committed; and

(d) all other relevant circumstances.

(2) Whether the complaint was made as soon as could reasonably be expected will depend on the facts of the particular case, and there is no outer time limit.

Statement of
child admissible
where no oral
testimony.

73. (1) A statement made by a child complainant in relation to an offence under this Act is admissible as evidence where the child does not give direct oral testimony at the trial.

(2) Sections 74 and 75 shall apply to the admissibility of evidence under subsection (1) of this section.

(3) Where a statement is tendered in evidence under subsection (1), the accused shall not be convicted on the basis of that evidence alone.

Admissibility of
child's
statement.

74. (1) Without limiting any other law, where the Court is satisfied that a child is being prevented from giving evidence and where a statement is made in any written form or manner by a child or by another person on behalf of the child, that statement may be admissible in a trial as evidence of any fact of which direct oral evidence of the child would be admissible.

(2) The Court may admit into evidence the following statement made by a child -

- (a) a statement made to and written by the police;
- (b) a statement made in the form of a statutory declaration;
- (c) a statement written by the child;
- (d) a statement written by another person on behalf of a child where the child cannot write.

(3) The following provisions shall have effect in relation to any written statement of a child admissible in evidence under this section -

- (a) the child shall state the child's age and that an adult of the child's choice was present with the child when it was made;
- (b) if the statement is written on behalf of a child, it shall be signed by both the child and the person who wrote it and it shall be dated;
- (c) if the statement is written on behalf of a child who cannot write, the person who wrote the statement shall read it to the child before the child puts the child's mark or thumb print on it and it shall be accompanied by a declaration of the person who wrote it that it was read to the child and that the child appears to understand it and the child agreed to it;

- (d) if the statement is written on behalf of a child who cannot read, the person who wrote the statement shall read it to the child before the child signs it and it shall be accompanied by a declaration of the person who wrote it that it was read to the child and the child appeared to understand it and the child agreed to it;
- (e) if the statement refers to any other document, the copy of the statement given to any other party to the proceedings shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party to whom it is given to inspect the document or a copy of it.

(4) The prosecution shall give a copy of the statement to the accused not less than seven days in advance of the prosecution tendering it into evidence.

(5) Any document or object referred to and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in Court by the witness.

(6) A child whose written statement is tendered in evidence in a trial under this section shall be treated as a person who had been examined by the Court.

75. (1) Without limiting any other written law, where a statement, referred to in section 74, appears to the Court to have been prepared for the purposes of:

- (a) pending or contemplated criminal proceedings; or
- (b) a criminal investigation,

Statement in documents that appear to have been prepared for purposes of criminal proceedings or investigations.

the statement shall not be tendered in evidence in a trial without leave of the Court, and the Court shall not give leave unless it is of the opinion that the statement ought to be admitted in the interest of justice.

(2) In considering whether the admission of a statement under subsection (1) would be in the interest of justice, the Court shall have regard -

- (a) to the contents of the statement;
- (b) to any risk of unfairness to the accused, or if there is more than one accused to any one of them, if it is likely that the statement can be controverted and the person making the statement does not attend to give oral evidence in the proceedings;
- (c) to any other circumstances that appear to the Court to be relevant.

(3) A written statement mentioned in this section shall be tendered in evidence by the prosecution any time before the prosecution closes its case against the accused -

- (a) if the statement is written by the child, by the prosecution submitting the statement to the Court; or
- (b) if the statement is written on behalf of a child, by calling the person who wrote the statement to put the statement into evidence.

(4) Where a statement is tendered into evidence under subsection (1), it shall be read to the Court, and the accused is entitled to challenge its admissibility before it is admitted into evidence or tendered at paper committal.

(5) Where the accused exercises the right under subsection (4), the Court shall conduct a hearing in the absence of the jury and public and decide whether the whole or any part of the statement is admissible into evidence.

No conviction on statement alone.

76. Where a statement is tendered in evidence under sections 74 or 75, the accused shall not be convicted on the basis of that evidence alone.

Evidence of sexual activity

Evidence of sexual activity where complainant under 16 years.

Second Schedule.

77. (1) Where the complainant in proceedings for an offence under this Act is under 16 years of age, no evidence shall be adduced that the complainant has engaged in any sexual activity (with the accused or with any other person) other than the sexual activity that forms the subject matter of the charge unless the Court determines in accordance with the procedure set out in the Second Schedule, that the evidence -

- (a) is of criminal sexual activity involving the complainant, and there is evidence of a conviction of a third party for this criminal sexual activity;
- (b) is to be used to show that inappropriate sexual knowledge was not learnt from the accused, or that the complainant had a motive to lie; and
- (c) is of facts sufficiently similar to the facts in issue to have significant relevance.

(2) Any evidence referred to in subsection (1) shall only be admitted to the extent that the Court finds that the proposed evidence is material to a fact in issue in the case and that its probative value is not outweighed by its inflammatory nature or potential prejudice to the proper administration of justice or the complainant's personal dignity and right of privacy.

Evidence of
sexual activity,
reputation
inferences.

78. (1) In proceedings in respect of a sexual offence, evidence as to the sexual activity or reputation of the complainant is not admissible, and the defence shall not be allowed to cross-examine on the matter.

(2) In proceedings in respect of a sexual offence, evidence that the complainant has engaged in sexual activity, whether with the accused or with any other person, is not admissible to support an inference that, by reason of the sexual nature of that activity, the complainant -

- (a) is more likely to have consented to the sexual activity that forms the subject-matter of the charge; or
- (b) is less worthy of belief.

Evidence of
sexual activity,
in general.

79. (1) Where the complainant in proceedings for an offence under this Act is sixteen years of age or over, no evidence shall be adduced that the complainant has engaged in sexual activity (with the accused or with any other person) other than the sexual activity that forms the subject-matter of the charge, unless the Court determines, in accordance with the procedure set out in the Second Schedule, that the evidence -

Second
Schedule.

- (a) is of specific instances of sexual activity; and
- (b) (i) tends to rebut evidence that was previously adduced by another party to the proceedings;
- (ii) where the accused denies sexual penetration, tends to explain the presence of semen or the source of pregnancy or disease or any injury to the complainant, where it is relevant to a fact in issue; or
- (iii) is of consensual sexual activity of the complainant with the accused where this is reasonably contemporaneous with the date of the alleged offence.

(2) Any evidence referred to in subsection (1) shall only be admitted to the extent that the Court finds that the proposed evidence is material to a fact in issue in the case and that its probative value is not outweighed by its inflammatory nature or potential prejudice to the proper administration of justice or the complainant's personal dignity and right of privacy.

Previous
allegations of
sexual offences.

80. (1) The defence shall not introduce evidence directly or ask questions in cross-examination suggesting that previous allegations of sexual offences by the complainant may have been false without the prior permission of the Court.

- (2) The Court shall not give such permission unless -
- (a) the defence can adduce concrete evidence that the previous allegation was in fact false; and
 - (b) the relevance of the evidence to the case of the accused is demonstrated to the satisfaction of the Court.

PART VI BAIL

Factors to be taken into account.

81. Where the Court is required to determine whether to grant bail in respect of an offence under this Act the Court shall take into account -

- (a) the need to secure the health, safety and well-being of the complainant or any witness;
- (b) the need to secure the health, safety and well-being of any child affected by the offence or by the decision on bail;
- (c) any hardship that may be caused to the accused or the family members of the accused if bail is not granted;
- (d) the record of the accused with regard to the commission of violent acts and whether there is evidence in or on the record of physical or psychological abuse to children;
- (e) whether there are substantial grounds for believing that the accused, if released on bail would -
 - (i) fail to surrender to custody;
 - (ii) commit an offence while on bail; or
 - (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to the accused or any other person;
- (f) any other matters which may be relevant to the case in question.

Bail for sexual offences.

82. (1) Where an accused -

- (a) is charged with an offence under this Act which includes penetration, and has a prior sexual offence conviction, or
- (b) is charged with committing a sexual offence with a child under section 10, 11, 12, 13, 16, 18 or 21,

the Court shall order that the accused be detained in custody until dealt with according to law, unless the accused, having been given a reasonable opportunity to do so, shows just cause why the detention of the accused in custody is not justified.

(2) For the purposes of subsection (1), just cause will be shown where the accused demonstrates that -

- (a) detention is not necessary to ensure the attendance of the accused in Court in order to be dealt with according to law;

- (b) detention is not necessary for the protection or safety of the public, including for the protection of any complainant or witness to the offence;
- (c) there is not a substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; and
- (d) detention is not necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including –
 - (i) the apparent strength of the prosecution's case;
 - (ii) the gravity of the offence;
 - (iii) the circumstances surrounding the commission of the offence, including whether a weapon was used; and
 - (iv) the fact that the accused is liable, on conviction, for a potentially lengthy term of imprisonment.

Conditions of
bail.

83. (1) Where the accused is charged with an offence under this Act, the Court, in granting bail, may also order that the recognisance be subject to any of the following further conditions as the Court considers appropriate –

- (a) that the accused abstain from communicating, directly or indirectly, with any complainant, witness or other person identified in the order except in accordance with the conditions specified in the order as the judge considers necessary;
- (b) that the accused not harass or molest, or cause another person to harass or molest, a specified person, including the complainant or any relevant child;
- (c) that the accused not be in a locality in which are situated the premises in which a specified person, including the complainant or any relevant child, resides, works or is frequently present at;
- (d) that the accused not be on premises which are or in a locality in which is situated the place of education of a specified person named in the order, including the complainant or any relevant child;
- (e) where the accused continues to reside, work or attend a place of education with a specified person, including the complainant or any relevant child, that the accused do not enter or remain in the place of residence, employment, or education;

- (f) that the accused report at such times as are specified at a specified police station;
- (g) that the accused remain within a territorial jurisdiction specified in the order;
- (h) that the accused notify the police officer or other person designated in the order of any change in the address, employment or occupation of the accused;
- (i) that where the accused is the holder of a passport, the accused deposit it as specified in the order; and
- (j) that the accused comply with any other condition specified in the order that the Court considers necessary to ensure the safety and security of any complainant of or witness to the offence or in the interest of the public.

(2) Where a police officer believes on reasonable grounds that a person who has been granted bail subject to one or more of the conditions set out in subsection (1) has failed to comply with a condition of the recognizance, the police officer may apprehend the person without a warrant.

(3) Where bail has been granted to a person on a condition imposed under subsection (1) and the person contravenes or fails to comply with the condition, the bail shall be forfeited and the accused is liable to be re-arrested.

Complainant to be notified if accused released on bail.

84. If an accused charged with an offence under this Act is released on bail, the prosecutor shall immediately inform the complainant of that fact, and any conditions of bail.

PART VII SENTENCING

Orders following conviction.

85. Where an accused is convicted of an offence under this Act, in addition to passing sentence the Court may —

- (a) order that the accused pay civil compensation to the complainant; and
- (b) make one or more of the following orders —
 - (i) drug treatment and drug testing order;
 - (ii) rehabilitation order;
 - (iii) protection and safety order; and
 - (iv) where the offence for which the accused has been convicted suggests risk of HIV transmission to the complainant, a HIV testing order and disclosure of the results to the Court and complainant; and
 - (v) mental and psychological treatment.

PART VIII
MEDICAL CARE AND SUPPORT FOR COMPLAINANT

Health worker
to report child's
sexual abuse.

86. Where a health worker treats a child and finds evidence that the child has been sexually abused, notwithstanding any law relating to medical confidentiality, the health worker shall report the suspected abuse to the police and keep a record of having done so.

PART IX
PREVENTION

National Task
Force for
Prevention of
Sexual
Offences.

87. (1) There shall be established an inter-agency task force to be known as the National Task Force for the Prevention of Sexual Violence which shall have the duty to develop and implement a national plan for the prevention of sexual violence.

(2) The President shall appoint the members of the Task Force, which shall include the Ministers of Legal Affairs, Home Affairs, Human Services and Social Security, Amerindian Affairs, Education, Health, Local Government, Youth, Sport and Culture, senior public officers with responsibility for law enforcement, health and human and social services and persons from non-governmental organisations.

(3) The Task Force shall carry out the following activities either directly or by one or more of the constituent ministries as appropriate —

- (a) develop and publish within a reasonable time of the coming into force of this Act, a National Plan for the Prevention of Sexual Offences, which shall include the necessary steps to eradicate sexual violence in Guyana;
- (b) develop initiatives for prevention of sexual violence;
- (c) co-ordinate the implementation of the National Plan;
- (d) commission and co-ordinate the collection, publication and sharing of data among government agencies;
- (e) establish policies to enable the Government to work with non-governmental organisations, faith-based organisations, community-based organisations and other elements of civil society to prevent sexual violence and provide assistance to victims of sexual violence;
- (f) provide guidance to the Sexual Violence Unit;
- (g) develop national policy guidelines and protocols for victims of sexual violence and address matters relating to police services, prosecution, medical services, social service, probation service and prison service;

- (h) monitor the implementation of this Act, the National Plan and the National Policy Guidelines and protocols;
- (i) co-ordinate national education and awareness programmes;
- (j) focus special attention on the issues of sexual violence in remote areas, including access to police support and medical attention, court services;
- (k) determine the effectiveness of public awareness exercises and measures to be taken to ensure effectiveness;
- (l) provide guidance on the development of training programmes specified under section 91;
- (m) within a reasonable time of this Act coming into force, publish a paper on integration of reports to be made, seeking medical care and evidence gathering and recommend either the establishment of a special centre, or a unit at hospitals or at police stations, and setting out the necessary steps to establish any integrated services;
- (n) in general, ensure acceptable and uniform treatment of all sexual offence matters;
- (o) produce an annual report updating data and statistics, reporting on the implementation of the Act, National Plan and National Policy Guidelines, and other prevention activities.

(4) The Task Force shall meet at least once every three months.

Sexual Violence
Unit.

88. (1) The Minister shall establish a Sexual Violence Unit in the Ministry of Human Services and Social Security.

(2) The Sexual Violence Unit, or until it is established, the Director of Social Services shall support the Task Force in carrying out the provisions of section 87 (3).

Data.

89. (1) All data collected shall respect the privacy of victims or complainants of sexual offences.

(2) Data shall include, but shall not be limited to, number of reports to the police, number of arrests, prosecutions and successful convictions, gender and age of victims or complainants, geographical locations where offences are alleged to have happened, number of persons seeking medical care, types of injuries received by victims or complainants, relationship of victim or complainant to accused, number of matters withdrawn from Court and number of matters where complainants chose not to proceed further.

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SEXUAL OFFENCES

[No. 7

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Public
awareness.

90. (1) The Minister, in co-operation with other governmental agencies and non-governmental organisations shall prepare and disseminate public awareness programmes designed to educate victims and potential victims of sexual offences and their families of the risk of victimisation.

(2) Awareness programmes referred to in subsection (1) shall include but shall not be limited to –

- (a) information regarding care arrangements for children, appropriate and inappropriate behaviour including touching and words, safe and preventative practices;
- (b) sex education;
- (c) information regarding exposure to and treatment of HIV and Acquired Immune Deficiency Syndrome and other sexually transmitted diseases;
- (d) information relating to the psychological harm to a victim of sexual offences;
- (e) the measures and services in place to ensure the safety of victims or complainants;
- (f) information on how to contact relevant law enforcement authorities;
- (g) information about the rights of victims and potential victims of sexual violence; and
- (h) information about how to recognise sexual abuse and where to seek help.

(3) The Minister in co-operation with other governmental agencies and non-governmental organisations shall prepare and disseminate public awareness programmes designed to discourage behaviour that fosters the abuse of persons that leads to sexual violence.

(4) Awareness programmes referred to in subsection (3) shall include, but shall not be limited to –

- (a) materials that include the impact of sexual violence on individual victims; and
- (b) aggregate information on sexual violence world wide and domestically as well as warnings of the potential for criminal consequences for engaging in sexual violence or any offence under this Act.

(5) Materials used in the public awareness programmes shall include as appropriate pamphlets, brochures, posters, advertisements in mass media, and any other methods appropriate for reaching victims or potential victims of sexual violence.

(6) Any material used under this section shall preserve the privacy of the victim or complainant and the family of each.

Education and training.

91. (1) The Ministers of Legal Affairs, Home Affairs, Health, Human Services and Social Security shall ensure that training programmes on sexual violence are developed and delivered to police, prosecutors, magistrates and judges, health workers, probation officers, social workers and the prison service, whether directly or by collaboration with other appropriate governmental agencies and non-governmental organisations.

(2) The Judicial Service Commission shall ensure that training is provided to magistrates and judges not only on implementation of this Act, but also on existing laws, procedures and obligations relating to sexual offences, for example regulating requests for adjournments, cross-examination of the complainant, and on sexual offences in general, including rape myths.

PART X MISCELLANEOUS

Rules of Court and regulations.

92. (1) Rules of Court may be made for the purpose of regulating the practice and procedure of the Court in proceedings under this Act.

(2) The Minister may make regulations for carrying out the provisions of this Act and for prescribing anything that needs to be prescribed.

Law inconsistent with this Act.

93. Where any provision of any law is in conflict or inconsistent with any provision of this Act, the provision of this Act shall prevail.

Laws to be applied.

Cap. 5:03
Cap. 10:01

94. Except as otherwise provided by this Act, the Evidence Act and the Criminal Law (Procedure) Act shall apply to this Act where necessary with such modifications, adaptations and qualifications that may be needed for the due administration of this Act.

Repeal and savings.

95. (1) The enactments specified in the first column of the Third Schedule are repealed to the extent mentioned in the second column of that Schedule.

Third Schedule

(2) Notwithstanding the repeal under subsection (1), if before the date on which this section comes into force there are any pending proceedings instituted, the proceedings shall be disposed of or continued under the law as it stood immediately before the commencement of this section.

FIRST SCHEDULE s. 43
PAPER COMMITTALS FOR SEXUAL OFFENCES

Interpretation.

1. In this Schedule -

“document” means anything in which information of any description is recorded; and

“paper committal” means a committal proceeding held in accordance with this Schedule.

Paper committal to be held by magistrate.

2. Paper committals are to be held by a magistrate, and sections 45 to 51 relating to the exclusion of the public shall apply.

Proceedings in the presence of accused.

3. (1) Subject to subparagraph (2), the accused shall be present at a paper committal.

(2) A magistrate may proceed with a paper committal in the absence of the accused if -

- (a) the magistrate considers that by reason of the disorderly conduct of the accused before the magistrate it is not practicable for the evidence to be tendered in the presence of the accused; or
- (b) the accused cannot be present for reasons of health but is represented by an attorney-at-law and has consented to the evidence being tendered in the absence of the accused.

Adjournment.

4. (1) A magistrate may, before beginning a paper committal or at any time during the proceedings, adjourn the proceedings, and if the magistrate does so shall remand the accused.

(2) The Court shall when adjourning fix the time and place at which the proceedings are to be resumed and the time fixed shall be that at which the accused is required to appear or be brought before the Court in pursuance of the remand.

Evidence which is admissible.

5. (1) For the purposes of a paper committal only the evidence of the prosecution shall be allowed.

(2) The prosecutor or a person on behalf of the prosecutor shall file in the registry of the court all evidence for the prosecution for the purposes of a paper committal not later than forty-five days after the date on which the accused first appears in court in relation to the complaint.

(3) The following evidence shall be admissible for the purposes of a paper committal –

- (a) written statements which satisfy the requirements of paragraph 6;
- (b) the documents or other exhibits (if any) referred to in the written statements;
- (c) depositions taken pursuant to paragraph 11 and which satisfy the requirements of paragraph 7;
- (d) the documents or other exhibits (if any) referred to in the depositions;
- (e) statements which satisfy the requirements of paragraph 8;
- (f) documents which satisfy the requirements of paragraph 9.

Written
statements.

6. (1) A written statement by any person is admissible as evidence for the purposes of a paper committal if it satisfies the following requirements –

- (a) the statement is signed by the person who made it;
- (b) the statement contains a declaration by the person who made it to the effect that it is true to the best of the person's knowledge and belief and that the person made the statement knowing that, if it were tendered in evidence, the person would be liable to prosecution for wilfully stating in it anything which the person knew to be false or did not believe to be true;
- (c) before the statement is tendered in evidence, a copy of the statement is given, by or on behalf of the prosecutor, to the accused;
- (d) if the statement is made by a person under 18 years of age, it specifies the age of that person;
- (e) if the statement is made by a person who cannot read it, the statement was read to that person before the person signed it and is accompanied by a declaration by the reader to the effect that the statement was read to the person and that the person to whom it was read appeared to understand its contents;
- (f) if the statement refers to any other document as an exhibit, the copy of the statement given to the accused is accompanied by a copy of that document or, if not practicable, with any information as may be necessary to enable the party to whom it was given to inspect that document or a copy of it.

(2) So much of any statement as is admitted in evidence by virtue of this paragraph shall, unless the court commits the accused for trial by virtue of paragraph 12 or the court otherwise directs, be read aloud at the paper committal; and where the court so directs a summary or description shall be given of so much of any statement as is not read aloud.

(3) Any document or other object referred to as an exhibit and identified in a statement admitted in evidence by virtue of this paragraph shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

Depositions.

7. (1) A deposition, taken pursuant to paragraph 11, is admissible as evidence for the purposes of a paper committal if it satisfies the following requirements —

- (a) a copy of a deposition is sent to the prosecutor by the clerk of the court not later than seven days after the deposition is taken;
- (b) a copy of a deposition is served on the accused;
- (c) if the deposition refers to any document as an exhibit, the copy of the deposition given to the accused is accompanied by a copy of that document or, if not practicable, with any information as may be necessary to enable the party to whom it is given to inspect the document or the copy of it.

(2) So much of any deposition as is admitted in evidence by virtue of this paragraph shall, unless the court commits the accused for trial by virtue of paragraph 12 or the court otherwise directs, be read aloud at the paper committal; and where the court so directs a summary or description shall be given of so much of any deposition as is not read aloud in full.

(3) Any document or other object referred to as an exhibit and identified in a deposition admitted in evidence by virtue of this paragraph shall be treated as if it had been produced as an exhibit and identified in court by the person whose evidence is taken as the deposition.

Other statements.

8. (1) Any other statement may be admissible as evidence for the purposes of a paper committal if it satisfies the following requirements —

- (a) before the committal proceedings begin, the prosecutor notifies the magistrate and the accused that the prosecutor believes —
 - (i) that the statement might by virtue of section 91 or section 92 of the Evidence Act be admissible as evidence if the case came to trial; and

- (ii) that the statement would not be admissible as evidence otherwise than by virtue of section 91 or section 92 of the Evidence Act if the case came to trial;
- (b) the prosecutor's belief is based on information available to the prosecutor at the time of the notification;
- (c) the prosecutor has reasonable grounds for the belief;
- (d) the prosecutor gives the reasons for the belief at the time of the notification;
- (e) the prosecutor gives a copy of the statement to the court and the other party at the time of the notification.

(2) So much of any statement as is in writing and is admitted in evidence by virtue of this paragraph shall, unless the court commits the accused for trial by virtue of paragraph 12 or the court otherwise directs, be read aloud at the paper committal; and where the court so directs, a summary or description shall be given of so much of any statement as is not read aloud in full.

Other documents.

9. (1) Any other document is admissible as evidence for the purposes of a paper committal if the document, by virtue of any law –

- (a) is admissible as evidence in any criminal proceedings;
- (b) is admissible, or may be used, or is to be admitted or received as evidence in any criminal proceedings;
- (c) may be considered in any proceedings;
- (d) by its production, constitutes proof in any criminal proceedings;
- (e) by its production, evidence may be given in any criminal proceedings.

(2) In subparagraph (1) references to evidence include references to *prima facie* evidence.

(3) So much of any document as is admitted in evidence by virtue of this paragraph shall, unless the court commits the accused for trial by virtue of paragraph 12 or the court otherwise directs, be read aloud at the paper committal; and where the court so directs, a summary or description shall be given orally of so much of any document as is not read aloud in full.

Proof by production of copy.

10. (1) Where a statement, deposition or document is admissible in evidence by virtue of paragraph 6, 7, 8 or 9 it may be proved by the production of –

- (a) the statement, deposition or document; or
- (b) a copy of it or the material part of it.

(2) Subparagraph (1) (b) applies whether or not the statement, deposition or document is still in existence.

(3) It is immaterial for the purposes of this paragraph how many removes there are between a copy and the original.

(4) In this paragraph "copy", in relation to a statement, deposition or document, means anything on which information recorded in the statement, deposition or document has been copied, by whatever means and whether directly or indirectly.

Summons or
warrant as to
depositions.

11. (1) Where a magistrate is satisfied that –

- (a) any person is likely to be able to make on behalf of the prosecutor a written statement containing material evidence, or produce on behalf of the prosecutor a document or other exhibit likely to be material evidence, for the purposes of proceedings before a magistrate holding a paper committal; and
- (b) it is in the interests of justice to issue a summons under this paragraph to secure the attendance of that person to give evidence or to produce the document or other exhibit.

the magistrate shall issue a summons directed to that person requiring the person to attend before the magistrate at the time and place appointed in the summons to have that person's evidence taken as a deposition or to produce the document or other exhibit.

(2) If a magistrate is satisfied by evidence on oath of the matters mentioned in subparagraph (1), and also that it is probable that a summons would not procure the result required by it, the magistrate may instead of issuing a summons issue a warrant to arrest the person concerned and bring the person before a magistrate at the time and place specified in the warrant.

(3) A magistrate may issue a warrant to arrest a person and bring the person before the magistrate at a time and place specified in the warrant if –

- (a) the person fails to attend before a magistrate in answer to a summons under this paragraph;
- (b) the magistrate is satisfied by evidence on oath that the person is likely to be able to make a statement or produce a document or other exhibit as mentioned in subparagraph (1) (a);
- (c) it is proved on oath, or in such other manner as may be prescribed, that the person has been duly served with the summons and that a reasonable sum has been paid or laid over to the person for costs and expenses;

(d) it appears to the magistrate that there is no just excuse for the failure.

(4) Where a summons is issued under subparagraph (1) or a warrant is issued under subparagraph (2) or (3), the time appointed in the summons or specified in the warrant shall be such as to enable the evidence to be taken as a deposition before a magistrate begins the paper committal.

(5) If in pursuance of this paragraph a person's evidence is taken as a deposition, the clerk of the magistrate's court shall as soon as is reasonably practicable send a copy of the deposition to the prosecutor.

(6) If in pursuance of this paragraph a person produces an exhibit which is a document, the clerk of the magistrate's court shall as soon as is reasonably practicable send a copy of the document to the prosecutor.

(7) If in pursuance of this paragraph a person produces an exhibit which is not a document, the clerk of the magistrate's court shall as soon as is reasonably practicable inform the prosecutor of the fact and of the nature of the exhibit.

Committal for trial.

12. If a magistrate holding a paper committal is satisfied that all the evidence tendered by or on behalf of the prosecutor is admissible under paragraph 5 (3), the magistrate shall commit the accused for trial for the offence without consideration of the contents of any statements, deposition or other documents, and without consideration of any exhibits which are not documents, unless —

- (a) the accused or one of the accused does not have an attorney-at-law acting for him in the case; or
- (b) an attorney-at-law acting for the accused or one of the accused, as the case may be, has requested the Court to consider a submission that there is insufficient evidence to put the accused on trial for the offence.

Procedure for committal without consideration of the evidence.

13. (1) Where the accused has an attorney-at-law acting for him in the case and where all the evidence tendered is admissible under paragraph 5 (3), the magistrate shall cause the charge to be read to the accused and shall then ascertain whether the accused wishes to submit that there is insufficient evidence to put the accused on trial for the offence charged.

(2) If the magistrate is satisfied that the accused or, as the case may be, each of the accused does not wish to make a submission that there is insufficient evidence to put the accused on trial for the offence charged, the magistrate shall, without consideration of the evidence, commit the accused for trial.

Procedure for committal or discharge on consideration of the evidence.

14. (1) Where -

- (a) the accused or one of the accused does not have an attorney-at-law acting for the accused in the case; or
- (b) the attorney-at-law of the accused or one of the accused, as the case may be, has requested the court to consider a submission that there is insufficient evidence to put the accused on trial by jury for the offence charged,

the magistrate shall consider all the evidence tendered and the submissions made under subparagraph (2) and shall then determine whether, in the magistrate's opinion, there is sufficient evidence to commit the accused for trial or to discharge the accused if the magistrate is of the opinion that there is insufficient evidence.

(2) Where the condition under subparagraph (1) (a) or (b) exists the magistrate shall follow the following procedure -

- (a) the magistrate may permit the prosecutor to make an opening address to the court, if the prosecutor so wishes, before any evidence is tendered;
- (b) after the magistrate opening address, if any, the magistrate shall cause the evidence to be tendered in accordance with paragraphs 6 (2), 7 (2), 8 (2) and 9 (3), that is to say by being read out aloud, except where the court otherwise directs or to the extent that it directs that a summary or description shall be given of so much of any statement as is not read aloud;
- (c) the court may view any exhibits produced before the court and may take possession of them;
- (d) after the evidence has been tendered the court shall hear any submission which the accused may wish to make as to whether there is insufficient evidence to put the accused on trial by jury for any indictable offence under this Act;
- (e) the court shall permit the prosecutor to make a submission in reply to any submission made by the accused or where the accused has not made any submission but the magistrate is nevertheless minded not to commit the accused for trial.

Record of reasons.

15. The magistrate shall record the reasons in writing for the committal or discharge.

Power of Director of Public Prosecutions to give directions.

16. (1) In any case where the magistrate discharges an accused person, the Director of Public Prosecutions may require the magistrate to send to the Director of Public Prosecutions the statements, documents, depositions, and exhibits tendered in connection with the case.

(2) After the discharge of the accused person and after the receipt of those statements, documents, depositions, and exhibits, if the Director of Public Prosecutions is of the opinion that a *prima facie* case is made out to put the accused on trial for any offence under this Act, the Director of Public Prosecutions may remit those statements, depositions, and exhibits to the magistrate with directions to reopen the paper committal and to commit the accused for trial, and may give such further directions as the Director of Public Prosecutions may think proper.

(3) Any directions given by the Director of Public Prosecutions under this paragraph shall be in writing signed by the Director of Public Prosecutions, and shall be followed by the magistrate, and the magistrate shall have all necessary power for that purpose.

(4) The Director of Public Prosecutions may at any time add to, alter, or revoke any of the directions.

Evidence after
committal of
accused person.

17. (1) Any person whose statement, deposition, document, or exhibit was not tendered in evidence by the prosecutor during a paper committal may give evidence at the trial of the accused person.

(2) Where the party seeking to adduce the evidence is the prosecution, the prosecution shall serve the evidence, in the form of a statement, deposition or document which would be admissible under paragraph 6, 7, 8 or 9, on the other party to the proceedings seven days before the day the witness will be cross-examined at trial or the contents of the statement, deposition or other document will be entered into evidence.

(ii) where the accused denies sexual penetration, how the evidence tends to explain the presence of semen or the presence of pregnancy or disease or any injury to the accused.

SECOND SCHEDULE s. 77, 79
PART I s. 79
PROCEDURE FOR APPLYING TO ADMIT EVIDENCE OF SEXUAL ACTIVITY WHERE COMPLAINANT OVER 16 YEARS OF AGE

Factors that Court must consider.

1. In determining whether evidence is admissible under section 79, the Court shall take into account -

- (a) the interests of justice, including the right of the accused to make a full answer and defence;
- (b) society's interest in encouraging the reporting of sexual assault offences;
- (c) whether there is a reasonable prospect that the evidence will assist in arriving at a just determination in the case;
- (d) the need to remove from the fact-finding process any discriminatory belief or bias;
- (e) the risk that the evidence may unduly arouse sentiments of prejudice, sympathy or hostility in the jury;
- (f) the potential prejudice to the complainant's personal dignity and right of privacy;
- (g) the right of the complainant and of every individual to personal security and to the full protection and benefit of the law; and
- (h) any other factor that the Court considers relevant.

Application to admit evidence of sexual activity.

2. (1) The prosecution or the accused may apply to the Court for a hearing to determine whether evidence is admissible under section 79.

(2) In this Schedule, "hearing" means a *voir dire* as carried out by the Court in the absence of the jury during criminal proceedings.

Form and content of application.

3. An application referred to in paragraph 2 must be made in writing and set out -

- (a) detailed particulars of the evidence that the applying party seeks to adduce, including that of specific instances of sexual activity; and
- (b) the relevance of that evidence to an issue at trial, including -
 - (i) how the evidence tends to rebut evidence that was previously adduced by another party to the proceedings;

- (ii) where the accused denies sexual penetration, how the evidence tends to explain the presence of semen or the source of pregnancy or disease or any injury to the complainant, where it is relevant to a fact in issue; or
- (iii) that the evidence is of consensual sexual activity of the complainant with the accused where this is reasonably contemporaneous with the date of the alleged offence and how the evidence is relevant to a fact in issue.
- Applications to cross examine.** 4. In the case of an application to cross-examine the complainant, the application must also set out –
- the initial questions sought to be asked of the complainant; and
 - the scope of the questioning sought to flow from the initial questioning.
- Jury and public excluded.** 5. The Court shall consider the applications under paragraphs 2 and 4 (including any hearing under paragraph 6) with the jury and the public excluded.
- Court may hold a hearing.** 6. Where the Court is satisfied –
- that the application was made in accordance with paragraph 3 or 4 as is relevant;
 - that a copy of the application has been given to the prosecutor, clerk of Court and the Director of Public Prosecutions; and
 - that the evidence sought to be adduced is capable of being admissible under section 79,
- the Court shall grant the application for a hearing and hold that hearing, having allowed sufficient time for the prosecution to consider the contents of the application.
- Complainant not compellable.** 7. The complainant is not a compellable witness at the hearing.
- Court's determination and reasons.** 8. At the conclusion of the hearing, the Court shall determine whether the evidence, or any part of the evidence, is admissible under section 79 and shall provide reasons for that determination, and the reasons must state –
- where not all of the evidence is to be admitted, the part of the evidence that is to be admitted;
 - the factors referred to in paragraph 1 that affected the determination; and
 - where all or any part of the evidence is to be admitted, the manner in which that evidence is expected to be relevant to an issue at trial.

(A.D. 2010)

SEXUAL OFFENCES

[No. 7]

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Record of reasons.

9. The reasons provided under paragraph 8 shall be entered in the record of the proceedings or, where the proceedings are not recorded, shall be provided in writing.

Publication.

10. (1) For the avoidance of doubt, no person shall publish in any document, or broadcast or transmit in any way, any of the following —

- (a) the contents of an application made under paragraph 2;
- (b) any evidence taken, the information given and the representations made at an application under paragraph 2 or at a hearing under paragraph 6;
- (c) the determination made and the reasons provided under paragraph 8.

(2) Every person who contravenes subparagraph (1) commits an offence and is liable on summary conviction to a fine of two million dollars.

Instruction to jury.

11. Where evidence is admitted at trial pursuant to a determination made under paragraph 8, the Court shall instruct the jury as to the uses that the jury may and may not make of that evidence.

PART II

s. 77

PROCEDURE FOR APPLYING TO ADMIT EVIDENCE OF SEXUAL ACTIVITY WHERE COMPLAINANT UNDER 16 YEARS OF AGE

Factors that Court must consider.

Paragraphs 1 to 11 of Part I shall apply, except that —

- (a) under paragraph 1, the Court shall also take into account the interest of society in preventing child sexual abuse, and the overriding duty of the Court to protect child witnesses from inappropriate and traumatic questioning;
- (b) in place of the requirements of paragraph 3, an application referred to in paragraph 2 must set out —
 - (i) details of the conviction of a third party for criminal sexual activity involving the complainant;
 - (ii) how the evidence is intended to be used to show that inappropriate sexual knowledge was not learnt from the accused, or that the complainant had a motive to lie; and
 - (iii) the similarities between the evidence sought to be adduced and the facts in issue in the case, and why these similarities are sufficient to cause the evidence to have material relevance to those facts.

THIRD SCHEDULE s. 95

LAWS REPEALED

LAWS REPEALED	EXTENT OF REPEAL
	Section
Criminal Law (Offences) Act Cap. 8:01	7, 65 to 71 (inclusive), 72, 73 (a), 74, 75, 76, 77, 77A and 83 to 89 (inclusive)
Criminal Law (Procedure) Act Cap. 10:01	31
Summary Jurisdiction (Offences) Cap. 8:02	24
Evidence Act Cap. 5:03	82

Passed by the National Assembly on 22nd April, 2010.

S.E. Isaacs,
Clerk of the National Assembly.

(Bill No. 30/2009)